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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,682	04/15/2005	Udo Heselhaus	BU-08PCT	2230
40570	7590	10/24/2006		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER BLACK, MELISSA ANN	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/531,682

Applicant(s)

HESELHAUS, UDO

Examiner

Melissa A. Black

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-12 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claims 1, 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are poorly written and hard to understand. For example, regarding claim 1, reference number three is given three different names in claim one alone, "movable part", "movable rear part", and "one part". Regarding claim 8, the figures fail to disclose the rear roof part lowered below the belt line of the body. Regarding Claim 5, the claim is unclear what rear section is being claimed, that the roof bow grips beneath? The figures only shows the rear bow (27) in front of the rear section (5) not beneath.

Regarding claim 1, the phrase "especially" renders the claim indefinite because it is unclear whether the limitation following the phrase is part of the claimed invention. See MPEP § 2173.05(d). Claim 1 also recites the limitation "the rear" in line 5. There is insufficient antecedent basis for this limitation in the claim. It should state - - a rear- -.

Applicant may seasonally challenge, for the official record in this application, this and any other statement of judicial notice in timely manner in response to this office

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action. Please specify the exact statement to be challenged. Applicant is reminded, with respect to the specific challenge put forth, of the duty of disclosure under Rule 56 to disclose material, which is pertinent to patentability including claim rejections challenged by applicant.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1, 2, 4, 7, 10 and 11 are rejected** under 35 U.S.C. 102(e) as being anticipated by US Pat Application Publication # 2005/0088008 A1 to Quindt et al.

Re Claims 1 and 4, Quindt et al. shows a convertible top for a motor vehicle that includes a soft flexible (Para 0054, line 6) front movable part and a rigid movable rear (26) section. The rear section can be raised and the front section remains in a closed position. (Paragraph 0008, lines 11-22)

Re claim 2, Quindt et al. shows that the top covers the passenger compartment, and the side members (16 and 18) lie on the windows.

Re claim 7, Quindt et al. discloses in Figures 1 and 9 that the rear roof (26) is in the same position when the front roof (10) is open and when it is closed.

Re claims 10 and 11, Quindt et al shows between Figures 4 and 5 that the rear roof (26) is pivot able around an axis. The rear also creates a passage for the cover (10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 6 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat Application Publication # 2005/0088008 A1 to Quindt et al.

Quindt et al. fails to disclose at least one remotely controlled drive is provided for the displacement of the roof bow. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the remote drive, since it is commonly known for the roof to have electric motors that operate their movement.

4. **Claim 3 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat Application Publication # 2005/0088008 A1 to Quindt et al in view of US Pat # 5,558,388 to Furst et al.

Quindt et al fails to disclose that the roof can be opened while the vehicle is in motion.

Furst et al teaches that it is well known in the art to have a vehicle roof with roof part that are able to open during travel in numerous embodiments, such as, sliding

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roofs, lifting roofs, sliding-lifting roofs, spoiler roofs, segmented roofs or folding roofs (Column 1, lines 21-24).

5. **Claims 8 is rejected** under U.S.C. 103(a) as being unpatentable over US Pat Application Publication # 2005/0088008 A1 to Quindt et al in view of US Pat Application Publication # 2003/0038501 A1 to Heselhaus.

Re Claim 8, Quindt et al fails to disclose that rigid roof can be lowered under the belt line of the body.

Heselhaus teaches that it is well known in the art to have the rigid top part stowed away under the windowsill line of the car body (Claim 12).

It would have been obvious at the time the invention was made to have the rigid roof be stowed away under the windowsill line, as taught by Heselhaus, to the device of Quindt et al, since Quindt et al already has most of the rigid rear below the windowsill line.

6. **Claim 9 and 12 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat Application Publication # 2005/0088008 A1 to Quindt et al. in view of DE 19926474 A1 to Minatti.

Re Claim 9, Quindt et al. fails to include a roll bar.

DE 19926474 A1 to Minatti teaches that it would have been obvious at the time the invention was made to include a roll bar (6 and 6a), as taught by Minatti, on the convertible top of Quindt et al.

It would have been obvious to one with ordinary skill in the art to include the roll bar, since the roll bar adds support to the soft top of the vehicle and is a safety issue, for the chance that the vehicle might roll over in an accident.

Re Claim 12, Quindt et al. fails to disclose the soft top that passed between the roll bar and the rigid top as it opens.

Minatti teaches that it would have been obvious at the time the invention was made to make the cover open between the roll bar and the rigid top in the back.

It would have been obvious at the time the invention was made to have the soft top lie between the rigid roof and the roll bar, therefore when opening the top would travel between the two because the roll bar adds support to the soft top and the rigid roof. Also once the soft top has traveled between the two the roll bar would still be up for the support incase of an accident.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. Black whose telephone number is (571)272-4737. The examiner can normally be reached on M-F 8:30-5:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571)-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mab  
10/19/2006

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